

1  
2  
3  
4  
5  
6  
7 IN THE UNITED STATES DISTRICT COURT  
8 FOR THE SOUTHERN DISTRICT OF OHIO  
9 WESTERN DIVISION AT DAYTON

10 - - -  
11 JAMES DERRICK O'NEAL, :  
12 Petitioner, :  
13 vs. : CASE NO. 1:02-cv-357  
14 MARGARET BAGLEY, WARDEN, : (Judge Barrett)  
15 Respondent. :  
16 - - -

17 DEPOSITION

18 of JOHN TADEUS KELLER, taken before me, Carol A. Metz,  
19 Registered Professional Reporter and Notary Public in and  
20 for the State of Ohio at Large, pursuant to agreement of  
21 counsel, as on Cross-Examination, at 2345 Kemper Lane, in  
22 the City of Cincinnati, County of Hamilton, and State of  
23 Ohio, on Thursday, the 13th day of December, 2007,  
24 beginning at 3:05 P.M.  
25 - - -

1 APPEARANCES:

2 On Behalf of the Petitioner(s):

3 MICHAEL W. KRUMHOLTZ, ESQ.  
4 and  
5 STEVEN DANKOF, JR., ESQ.  
6 BIESER, GREER & LANDIS  
7 400 National City Center  
8 6 North Main Street  
9 Dayton, Ohio 45402

10 On Behalf of the Respondent(s):

11 STEPHEN E. MAHER, ESQ.  
12 OFFICE OF THE OHIO ATTORNEY GENERAL  
13 23rd Floor, Capital Crimes  
14 30 E. Broad Street  
15 Columbus, Ohio 43215  
16 - - -

17 INDEX TO EXAMINATION

18 JOHN TADEUS KELLER	PAGE
19 Cross-Examination by Mr. Krumholtz.....	4
20 Examination by Mr. Maher.....	17

21 - - -  
22  
23  
24  
25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

EXAMINATION BY EXHIBITS

PETITIONER'S EXHIBITS

INTRODUCED

1 - lease documents re Carol O'Neal..... 6

- - -

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

JOHN TADEUS KELLER

a witness of lawful age, being by me first duly  
cautioned and sworn, testified on his oath as follows:

- - -

CROSS-EXAMINATION

BY MR. KRUMHOLTZ:

Q Sir, would you tell us your full name.

A John -- I will spell the middle name,  
T-A-D-E-U-S, last name Keller, K-E-L-L-E-R.

Q How are you currently employed?

A I am a lawyer licensed to practice in the state  
of Ohio.

Q How long have you been licensed in Ohio?

A November, 1975.

Q And what is your office address currently?

A 2345 Kemper Lane, Cincinnati, Ohio, 45244.

Q Are you in the private practice of law?

A Yes.

Q How long have you been in private practice?

A Since -- well, I was working part time from the  
time I passed the bar exam in November of 1975, but at  
that point my full-time employment was as a probation  
officer with the Adult Probation Department for Hamilton  
County, Ohio, and then I went into full-time private  
practice in March of 1976.

1 Q Where did you attain your law degree?

2 A Simon P. Chase College of Law in northern  
3 Kentucky.

4 Q Are you also licensed in the state of Kentucky  
5 to practice law?

6 A No.

7 Q Just Ohio?

8 A Yes.

9 Q Did you have any involvement, Mr. Keller, in the  
10 defense of James Derrick O'Neal in the Hamilton County  
11 Common Pleas Court pertaining to the death of his wife,  
12 Carol O'Neal?

13 A Yes.

14 Q What was your involvement with Mr. O'Neal?

15 A I was one of 2 attorneys appointed to represent  
16 him in that matter.

17 Q Who was the other defense counsel that was  
18 appointed to represent Mr. O'Neal?

19 A Dale Schmidt.

20 Q As I understand it, Mr. Schmidt has passed away?

21 A That's correct, in the past year.

22 Q Was there a lead counsel designated and a second  
23 chair counsel designated in your defense of Mr. O'Neal?

24 A I honestly don't recall if Dale was senior to  
25 me. So he may have been lead counsel, but I don't know

1 that for sure.

2 Q Do you have a general recollection of the case  
3 involving James O'Neal?

4 A I have a general sketchy recollection.

5 Q Let me talk to you about Mr. O'Neal's trial. Do  
6 you have a general recollection of Mr. O'Neal's trial?

7 A Yes.

8 Q Let me show what you has been marked as  
9 Petitioner's Exhibit Number 1.

10 MR. KRUMHOLTZ: This is a document, Steve, I  
11 think you already have.

12 BY MR. KRUMHOLTZ:

13 Q And I'll give you a minute to look at that,  
14 Mr. Keller.

15 A Okay.

16 Q Sir, do you have any recollection of ever seeing  
17 that particular document today, before today? I'm sorry.

18 A To the best of my recollection, no.

19 Q Do you have any recollection as to whether a  
20 lease involving the premises where Carol O'Neal lived at  
21 the time of her death was introduced into evidence at the  
22 trial of James O'Neal? Do you have any recollection as to  
23 whether such a lease was introduced?

24 A I don't.

25 Q And whether or not this particular document,

1 which is I will represent to you a lease involving those  
2 premises, whether that was introduced at Mr. O'Neal's  
3 trial, do you know either way as we talk about it today?

4 A No.

5 Q At page, I think it's the third page of this  
6 particular document that's marked as Petitioner's Exhibit  
7 Number 1, there is a listing of people who are permitted  
8 to occupy the residence where Carol O'Neal was living at  
9 the time of her death, which includes James O'Neal as her  
10 husband. Do you see where I am referencing?

11 A Yes.

12 Q Do you have any recollection as we talk about  
13 Mr. O'Neal's trial today, in 2007, whether any  
14 documentation like this was introduced at trial which  
15 shows that James O'Neal was permitted by the terms of the  
16 lease to be a resident of the residence where his wife,  
17 Carol, was living at the time of her death?

18 A I remember, to the best of my recollection, he  
19 and his 2 sons had been listed as parties permitted to  
20 live at that residence. Beyond that, I can't speak.

21 Q Okay, just to make sure I understand what your  
22 recollection is. I understand we are talking today, some  
23 years after the trial of Mr. O'Neal. As we talk about it  
24 today, do you remember any documentation that was  
25 introduced into evidence at that trial which showed that

1 Mr. O'Neal, James O'Neal, was a permitted resident of the  
2 location where Carol O'Neal lived at the time of her  
3 death?

4 A No, I can't even remember if that was a disputed  
5 claim.

6 Q Okay. Do you remember from the standpoint of  
7 being one of Mr. O'Neal's defense counsel whether there  
8 was a tactical reason on the part of the defense not to  
9 introduce this particular document, which is marked as  
10 Petitioner's Exhibit 1, at the trial of Mr. O'Neal? Do  
11 you remember anything like that, where there was a  
12 tactical reason on your part as defense counsel not to  
13 introduce this particular document, assuming that it was  
14 not introduced at trial?

15 A No.

16 Q Mr. Keller, do you know if any evidence, or do  
17 you remember if any evidence was introduced at James  
18 O'Neal's trial indicating that Carol O'Neal or anyone else  
19 had changed the locks to that residence at 4938 Plainville  
20 Road in Madisonville, Ohio, prior to Carol O'Neal's death?

21 A I believe that she may have changed the locks  
22 after she threw him out, but prior to her death, and that  
23 was within a short period of time, 5 days, 4 days,  
24 somewhere in there.

25 Q And again, just to basically inquire about what



1 you remember. Do you remember that that was evidence that  
2 came forth through a particular witness, or was that  
3 evidence that was revealed through documentation of some  
4 kind?

5 A That I can't remember.

6 Q In defending Mr. O'Neal, did you ever talk to  
7 the landlord or the owner of the residence at 4938  
8 Plainville Road in Madisonville, Ohio, a man named Kenneth  
9 Taylor? Do you remember ever talking to him?

10 A No.

11 Q Did you have an investigator that was working  
12 with you when you were defending Mr. O'Neal in this  
13 capital case?

14 A Not to the best of my recollection.

15 Q Do you have any knowledge about Mr. Schmidt and  
16 whether he ever spoke with Kenneth Taylor in his  
17 representation, his co-representation of James O'Neal?

18 A No.

19 Q Is it fair to say based on your best  
20 recollection, you have no memory of ever talking or  
21 interviewing, ever talking with or ever interviewing  
22 Mr. Taylor?

23 A That would be a fair statement.

24 Q Do you have any recollection as to whether the  
25 defense on behalf of Mr. O'Neal ever subpoenaed Mr. Taylor

1 to appear at Mr. O'Neal's trial?

2 A No recollection of that.

3 Q Do you have any recollection, as you think upon  
4 what happened at Mr. O'Neal's trial, whether Mr. Taylor  
5 actually came to trial and gave testimony?

6 A I don't remember that.

7 Q Assuming that Mr. Taylor did not testify at  
8 trial, was there any kind of a tactical determination on  
9 the part of Mr. Schmidt and yourself as defense counsel  
10 not to call Mr. Taylor, the landlord, the owner of the  
11 premises, to trial?

12 A You are asking me in the negative.

13 Q Right.

14 A I don't remember ever speaking with him, so I  
15 wouldn't have ever come to that conclusion.

16 Q Okay. Was there any evidence, as you recall,  
17 presented at Mr. O'Neal's trial by the defense indicating  
18 that Mr. O'Neal had a key to the residence at 4938  
19 Plainville Road in Madisonville, Ohio? This is a  
20 residence where Carol O'Neal was living at the time of her  
21 death. Was there any evidence that was presented by the  
22 defense at Mr. O'Neal's trial indicating that Mr. O'Neal  
23 had a key to that residence at any time leading up to  
24 Mrs. O'Neal's death?

25 A Well, at any time, meaning from the time he

1 moved in?

2 Q Yes -- yes.

3 A I don't recall any evidence. My assumption was  
4 that he did, because he and the boys came and went.

5 Q Was there any evidence that, at any point before  
6 Mrs. O'Neal's death that James O'Neal had a key to the  
7 residence and had that key taken away from him by somebody  
8 else?

9 A Not that I recall.

10 Q Was there any evidence at Mr. O'Neal's trial  
11 presented either by the State or the defense indicating  
12 what items were found in his possession at the time of his  
13 arrest following the death of Carol O'Neal?

14 A I don't recall. All I remember is he was hiding  
15 at a house in close proximity to that residence.

16 Q Was there any evidence at Mr. O'Neal's trial  
17 that you can recall indicating that Carol O'Neal had taken  
18 a key to the residence at 4938 Plainville Road from James  
19 O'Neal, that she had actually taken a key from him before  
20 her death?

21 A Not that I recall. All I remember is they had  
22 an altercation. She told him to take, that he and the 2  
23 boys were to leave, and shortly thereafter he and the boys  
24 exited, got on a bus and went downtown.

25 Q Based on the answer that you gave me just a few

1 moments ago, I think I know the answer to my next  
2 question, but let me ask it to make sure that I understand  
3 your answer.

4 As you recall the trial of Mr. O'Neal, did the  
5 defense present any evidence at the trial that the locks  
6 at Mrs. O'Neal's residence, the place where she was  
7 killed, had not been changed before the death of Carol  
8 O'Neal, any evidence presented by the defense that in fact  
9 the locks had not been changed prior to her death?

10 A Not that I recall.

11 Q Prior to your work defending Mr. O'Neal, what  
12 was your experience in defending capital cases?

13 A I had been doing capital cases, I believe,  
14 since -- I started in 1984 or 1985.

15 Q How many capital cases had you defended at trial  
16 before your work on Mr. O'Neal's case, if you can  
17 remember?

18 A I honestly can't remember.

19 Q Assume for me that at a series of pretrial  
20 hearings in the James O'Neal case -- in fairness to you,  
21 I'm not sitting here with the trial transcript or pretrial  
22 hearing transcripts, but I want you to assume for me,  
23 Mr. Keller, if you would, that at pretrial proceedings and  
24 oral hearings before trial the State suggested to the  
25 Court that the locks at Mrs. O'Neal's home, the residence

1 where she was killed, had been changed from the time that  
2 James O'Neal was kicked out of the residence and before  
3 Carol O'Neal was killed. Assume that is true. Was there  
4 any tactical decision on the part of the defense team for  
5 Mr. O'Neal not to challenge that suggestion by the  
6 prosecution?

7 A You know, I simply can't remember. I think the  
8 issue was, one of the issues was whether or not the  
9 parties were lawfully married.

10 Q And do you remember how that played out at the  
11 trial, that issue?

12 A I recall, I think I presented to the Court  
13 actually the first time when the case was dismissed and  
14 then was referred to the court of appeals, I got a  
15 marriage license or marriage certificate evidencing that  
16 he and the decedent had been lawfully married.

17 Q Assume for me again -- and I don't have the  
18 transcript that you are able to review as we talk today,  
19 so please just assume for the sake of my question that  
20 this is a correct statement of what occurred at trial.  
21 Assume that in opening statement at trial the State  
22 through the prosecutors argued that Carol, or stated that  
23 Carol O'Neal took James O'Neal's key from him when she  
24 kicked him out of the residence prior to her death.  
25 Assume that is what the State stated in the course of

1 opening statement. With that assumption, assume further  
2 that no objection was made to that portion of the State's  
3 opening statement.

4 Do you remember any tactical decision on the  
5 part of the defense team not to object or challenge the  
6 State's claim that Carol O'Neal had taken a key from James  
7 to the residence before Carol was killed?

8 A I have no recollection of that.

9 Q Assume in closing argument at trial that the  
10 State through the prosecution contended that the evidence  
11 established that James O'Neal did not have a key.

12 A I'm sorry, assume that --

13 Q Assume that at the closing argument at the trial  
14 of James O'Neal.

15 A By whom, closing argument by?

16 Q By the prosecution. I'm sorry.

17 A Okay.

18 Q Let me restate it, because it was confusing.

19 Assume at closing argument by the State at  
20 Mr. O'Neal's trial the prosecutor contended that that  
21 evidence said or indicated that James O'Neal did not have  
22 a key to the premises. Assume that the trial evidence did  
23 not speak to that issue, did not establish whether he had  
24 a key or did not. Assume that no objection was raised to  
25 that part of the prosecution's closing argument.

1 Do you remember whether there was a tactical  
2 decision on the part of the defense team not to object to  
3 that portion of the prosecution's closing argument?

4 A No, I have no recollection of any of closing  
5 arguments.

6 Q Do you have any recollection -- again, in  
7 fairness to you, I'm not here with the instructions that  
8 were given by the Court to the jury at the time of  
9 Mr. O'Neal's trial. But in terms of what you remember, do  
10 you have any recollection of the Court referring to the  
11 premises where Carol O'Neal was killed as the wife's  
12 residence? Do you have any recollection of that either  
13 way?

14 A No.

15 Q If the Court indicated in the course of its  
16 instructions to the jury that the residence where Carol  
17 O'Neal was killed was the wife's residence, and if that  
18 statement of the Court, if that instruction of the Court  
19 was not objected to by defense counsel, assuming that, was  
20 there some tactical decision made by the defense team that  
21 you remember which led you to refrain from objecting to  
22 that instruction or that statement by the Court?

23 A Not that I remember.

24 Q I said an hour, and I think I am down to my last  
25 question.

1 A Okay.

2 Q Lastly, do you have any recollection of the use  
3 of the word "estranged" by the Court in instructing the  
4 jury in the case of James O'Neal as it related to Carol  
5 O'Neal's relationship with James O'Neal?

6 A No.

7 Q If you assume that the Court used that term,  
8 "estranged," to describe the relationship between Carol  
9 O'Neal and James O'Neal, and if you assume that no  
10 objection was made to the use of that term, do you  
11 remember any tactical decision on the part of the defense  
12 team not to object to the Court's use of the term  
13 "estranged" relating to Carol O'Neal and James O'Neal and  
14 their relationship?

15 A No, I would have to look at what the legal  
16 definition of estranged is.

17 Q Do you -- last question. Do you remember  
18 looking at that definition of the term "estranged" during  
19 the course of Mr. O'Neal's trial or in preparing for that  
20 trial?

21 A All I remember is that the issue of a legal  
22 marriage was raised, and it may have even been by the  
23 judge.

24 Q Mr. Keller, I don't have any other questions for  
25 you. Steve may have some questions.



1 A Okay.

2 EXAMINATION

3 BY MR. MAHER:

4 Q Mr. Keller, my name is Steve Maher. I am with  
5 the Attorney General's Office.

6 How did Mr. O'Neal get in the house just before  
7 he killed the Mrs.?

8 A My recollection is that she was coming down the  
9 stairs with some of his belongings that were boxed up when  
10 he kicked the door in. That's my recollection, and she  
11 ran up the stairs, put her 3 children in a closet, and  
12 then ran behind the door of the room in which she had  
13 entered and was hiding behind that door.

14 Q What -- tell me about the kicking in the door.

15 A I think that's all I remember. That's my  
16 recollection though. I can't -- as I sit here today, 12  
17 years or 13 years later, I don't know whether that's  
18 accurate or not. That's my recollection of what had  
19 occurred.

20 Q What about the kicking out part? Kind of we got  
21 a kicking in of the door, but then now what about the  
22 kicking out? What about the Mrs., or the woman kicking  
23 James out? What do you remember about that?

24 A That they had, "they" being James O'Neal and the  
25 decedent, had a verbal altercation which, as I recall,

1 turned physical, and I remember he was very upset, "he"  
2 being James O'Neal, after the fact he was explaining that  
3 she was disrespecting him, but she had told both he and  
4 the 2 children to leave, to get out of the house.

5 Q His 2 children?

6 A His -- he had 2 biological children, whom my  
7 recollection is that he had lawful custody. I think he  
8 had, as I recall, he may have had 10 children or fathered  
9 10 children, but he had taken these children because there  
10 were problems with the biological mother, and had  
11 established this residence with the decedent, brought his  
12 2 kids and her 3 kids. So it was a blended family.

13 Q Now, the kicking out part, the kicking out of  
14 Mr. O'Neal in relation to the kicking in of the door,  
15 what's the time frame?

16 A I believe it was 4 or 5 days from the date he  
17 left to the date he returned and the shooting occurred.

18 Q Okay. Now, with this context, now that it's  
19 relatively fresh in your head, you have kind of brought  
20 yourself back to it, tell me what you think as a defense  
21 attorney about a burglary spec in this context, felony  
22 murder by reason of burglary. Give me your thoughts as a  
23 defense attorney about a felony murder burglary spec,  
24 death spec in this context.

25 A I believe the first time that we argued this

1 case before Judge Winkler, we raised the issue that you  
2 couldn't be convicted. Could obviously be charged, but  
3 you shouldn't be convicted of an aggravated burglary where  
4 the parties -- and that's where the marriage. They were  
5 lawfully married, although he had left. I may have even  
6 given the example, if my wife -- and I may have -- when my  
7 wife and I, I left in the morning, I was pissed, told her  
8 to go pound salt, and she said, "Get out." When I came  
9 home that night, if she had changed the locks, I could  
10 kick the door in, because I didn't believe that that was  
11 an aggravated burglary.

12 I remember that she had, "she" being Carol, had  
13 filed a domestic violence charge with a TPO attached to  
14 it, but it had never been served upon him, and my  
15 recollection is -- I don't know why I remember this, but  
16 the night of the homicide, homicide detectives went to  
17 Judge Mestamaker, and somehow they tried to right the fact  
18 that they hadn't served the TPO personally upon Mr. O'Neal  
19 until after the fact. So we were arguing, and that  
20 triggers my recollection that Judge Winkler -- and this is  
21 Ralph Winkler, Sr., because now there is a Ralph Winkler,  
22 Jr.

23 Ralph Winkler, Sr., had said, "Unless you can  
24 prove that there is a lawful marriage, that this is not a  
25 common law" -- and common law was struck down I think in

1 1991 in Ohio -- "that I am not going to buy that  
2 argument."

3 I went early in the morning once and got one of  
4 the people in probate court to go through the records,  
5 which sometimes is not an easy thing to get them to do  
6 that, but we had a certified copy of the marriage  
7 certificate. I recall that, I think.

8 Q Okay. Now, correct me if I am wrong. It sounds  
9 to me like you recognized an issue, a defense issue in  
10 regards to the burglary spec, and you attacked the  
11 burglary spec. The validity of the burglary spec was  
12 attacked by you guys pretrial.

13 A Correct, which resulted in the judge throwing  
14 out that specific spec, and as an afterthought, at the end  
15 of trial the second spec was thrown out, attempting to  
16 kill 2 or more, because it was the stepson. And as I  
17 recall, that spec was dismissed at the trial. The irony  
18 of that was had the aggravated burglary been dismissed the  
19 second time around, so to speak, they would have knocked  
20 out both of the specs.

21 Q Beat both the specs?

22 A Correct, and it was Judge -- I remember, because  
23 I didn't like her opinion -- Bettman wrote the opinion  
24 from a court of appeals just saying that, as I recall, you  
25 had to take additional information, you had to get

1 additional information at trial, which I thought we had,  
2 but obviously we wouldn't be here if we had done that.  
3 So --

4 Q Now, let me see if I have got this right. Of  
5 course, correct me if I am wrong. You guys attacked the  
6 burglary spec and beat it, and then although you beat it,  
7 you wound up, it got reinstated?

8 A Correct, with I think instructions from the  
9 court of appeals to take additional evidence, my  
10 recollection is, as it related to the burglary.

11 Q Okay. So at least sounds to me like you did not  
12 fall asleep at the switch in terms of recognizing an issue  
13 about the burglary spec and then attacking the burglary  
14 spec?

15 A I think that would be a fair statement.

16 Q You were on the job --

17 A Correct.

18 Q -- for that? Okay. Now, same context. Tell me  
19 what your thoughts are as a defense attorney about whether  
20 or not, whether or not the Mr. had a key. Does it make a  
21 difference to you? Does it not make a difference in terms  
22 of kicking in the door and the burglary spec? The same  
23 context. Does it make a difference to you as a defense  
24 attorney whether or not the Mr. would have had a key  
25 hypothetically in his pocket?

1           A       Well, my sense was that now -- I can't remember  
2       what I thought back then, but my sense today would be it  
3       wouldn't make a difference. It was a matter of whether or  
4       not the parties had established separate residences.  
5       Clearly if there had been a TPO in effect, it wouldn't  
6       matter how he got into the house; in effect, having been  
7       served upon him. The fact that he kicked -- whether he  
8       had a key when he left the residence and came back a  
9       couple days later doesn't have as much importance to me as  
10      apparently it does to counsel.

11           Q       To Mr. Krumholtz.

12                   MR. KRUMHOLTZ: Story of my life.

13                   THE WITNESS: With all due respect.

14                   MR. KRUMHOLTZ: I appreciate that.

15                   MR. MAHER: That's about all I have.

16                   MR. KRUMHOLTZ: I don't have anything else.

17       Mr. Keller, you are, I am sure, familiar with the process.  
18       You have a right to review Carol's recording of your  
19       testimony to make sure it's accurate, or you can waive  
20       that right. Completely up to you.

21                   THE WITNESS: I would want to review it. I  
22       wouldn't be doing my job if I said I'm going to waive it.

23                   (Deposition concluded 3:40 P.M.)

24                   \_\_\_\_\_  
                                  JOHN TADEUS KELLER

25       CAM

          Charlene Nicholas & Associates, LLC  
5136 Phillipsburg-Union Road, Englewood, OH 45322  
Phone: (937) 836-7878      Fax: (937) 836-1718


1 STATE OF OHIO :  
2 COUNTY OF MONTGOMERY : ss C-E-R-T-I-F-I-C-A-T-E

3 I, Carol A. Metz, Registered Professional  
4 Reporter and Notary Public in and for the State of Ohio at  
5 Large, duly commissioned and qualified;

6 DO HEREBY CERTIFY that the above named JOHN  
7 TADEUS KELLER, was by me first sworn to testify to the  
8 truth, the whole truth, and nothing but the truth; that  
9 his testimony was recorded by me in stenotype and  
10 thereafter reduced to typewriting; and was taken at the  
11 time and place hereinabove set forth, by agreement of  
12 counsel as stated.

13 I FURTHER CERTIFY that I am not a relative or  
14 attorney of either party, nor in any manner interested in  
15 the event of the action.

16 IN WITNESS WHEREOF I have hereunto set my hand  
17 and affixed my seal of office on the 17th day of December,  
18 2007.

19  
20  
21   
22 CAROL A. METZ, RPR  
23 NOTARY PUBLIC, STATE OF OHIO  
24 My Commission Expires 10-30-2012  
25 - - -



Whereas, Kenneth Taylor, the landlord, agrees to rent to Carol O'Neal, the tenant, the dwelling unit located at 4936 Plainville Road, Madisonville, OH 45227, under the Section 8 Existing Housing Program administered by the Hamilton County Department of Community Development, the following provisions shall apply:

#### TERMS OF LEASE

The term of the Lease shall begin on Sept. 1, 1993 and shall continue until (1) a termination of the Lease by the landlord in accordance with paragraph (K) of this section, (2) a termination of the Lease by the Tenant in accordance with the Lease or by mutual agreement during the term of the Lease, or (3) termination of the Contract by the PHA.

#### HOUSING ASSISTANCE PAYMENTS OR HOUSING VOUCHER CONTRACT

The landlord will enter into a Housing Assistance Payments or Housing Voucher Contract ("Contract") with a Public Housing Agency ("PHA") under the Section 8 Existing Housing Program of the U.S. Department of Housing and Urban Development. Under the Contract, the PHA will make housing assistance payments to the Landlord to assist the Family, of which the Tenant is the representative, to lease the dwelling unit from the Landlord.

#### CONFLICT WITH OTHER PROVISIONS OF THE LEASE

In case of any conflict between the provisions of this section of the Lease and any other provisions of the Lease, the provisions of this section shall prevail.

#### RENT

1. The amount of the total monthly Landlord during the term of the "Contract Rent") shall be determined in accordance with the Contract between the Landlord and the PHA.
2. The portion of the Contract Rent payable by the Tenant ("Tenant Rent") shall be an amount determined by the PHA in accordance with HUD regulations and requirements. The amount of the tenant rent is subject to change as determined by the PHA during the term of the Lease. Any change in the amount of the tenant rent will be stated in a written notice by the PHA to the Tenant and the Landlord, stating the new amount and the effective date of the change. Initially and until such change the Tenant agrees to pay \$ 73.00 per month to the Landlord as the tenant rent. The tenant rent as determined by the PHA is the maximum amount the Landlord can require the Tenant to pay as rent for the dwelling unit, including all services, maintenance and utilities to be provided by the Landlord in accordance with the Lease. Each month, the PHA will pay a housing assistance payment to the Landlord on behalf of the Tenant Family in accordance with the Contract. The monthly housing payment is the difference between the Contract Rent and Tenant Rent. Therefore, the total rent shall be \$ 542.00 per month. The tenant shall pay \$ 73.00 per month and the Hamilton County Section 8 Program shall pay \$ 469.00 per month. Rent installments are due and payable on the first of each month in advance. Payment shall be made to the Landlord or the Landlord's agent by cash, check or money order.

MAKE CHECKS PAYABLE TO: (Please Print Clearly)

KENNETH TAYLOR 6226 ORCHARD LK. CINTI, O 45213  
NAME ADDRESS ZIP CODE





- 7 If the Landlord fails to receive the Tenant's monthly installment on or before the fifth (5th) day of the month in which it is due, the Tenant shall pay to the Landlord a late charge of ~~\$25~~ <sup>\$82</sup>, unless prior written arrangements have been made. If the Tenant is more than 5 days late in rent payments, the Landlord is to notify the Hamilton County Section 8 Program.

#### SECURITY DEPOSIT

1. The tenant has deposited ~~\$133~~ <sup>\$82</sup> with the Landlord as security deposit. The Landlord will comply with HUD regulations regarding security deposits from a Tenant, and shall not collect a security deposit which is more than the maximum amount permitted under the regulations.
2. The Landlord will hold the security deposit during the period the Tenant Family occupies the dwelling unit under the Lease. The Landlord shall comply with State and local laws regarding interest payments on security deposits.
3. After the Tenant Family has moved from the dwelling unit, the Landlord may (subject to State and local laws) use the security deposit, including any interest on the deposit, as reimbursement for any rent payable by the Tenant or other amounts which the Tenant owes under the Lease. The Landlord will give the Tenant a written list of all items charged against the security deposit and the amount of each item. After deducting the amount used as reimbursement to the Landlord, the Landlord shall promptly refund the full amount of the balance to the Tenant.
4. The Tenant agrees to pay rent so long as he inhabits the premises, to keep the apartment clean and to leave the apartment in a clean and rentable condition. In the event the Tenant pays the rent due and complies with such covenant and conditions, and surrenders the premises in good condition at the expiration of the term of the Lease or any such renewals or extensions, said sum without interest thereon, unless required by law, shall be returned to the Tenant, less any deductions made for the cost of repairing damages to the premises caused by the Tenant, his family, dependents, guests and/or visitors, reasonable wear and tear expected, or rent or other charges owed by the Tenant.
5. Tenant shall, in compliance with Ohio Rev. Code 5321.16, provide the Landlord in writing with forwarding address or new address to which the Landlord shall send the list described in paragraph 3 above and the refund due the tenant (if any).
6. The security deposit may not be used as rent payment while the Tenant resides on the premises.

#### UTILITIES AND APPLIANCES

1. The Landlord shall pay for the following utilities without any additional charge to the Tenant:  
Garbage Collection
2. The Tenant shall pay for the following utilities:  
Heat, Electric, Water/Sewer, Water Heating, Cooking Fuel
3. The Landlord shall provide the following appliances without any additional charge to the Tenant:  
Range/Refrigerator
4. The Tenant shall provide following appliances:  
None

## G. OCCUPANCY

1. The Tenant shall personally use and occupy the premises solely as a private dwelling for the people listed below:

	NAME	RELATIONSHIP
1.	Carol O'Neal	Self
2.	James O'Neal	Husband
3.	Richardos Lee	Son
4.	Sanchel Lee	Son
5.	Lashawnda Lee	Daughter
6.	Clarence Cody	Son
7.		
8.		

2. The Tenant may have temporary visitors. The same visitor may not stay over night more than four (4) times within any month without written permission from the Landlord.
3. The Tenant must receive written approval from the Landlord and the Section 8 Office for additional occupants prior to their occupancy.

## H. MAINTENANCE AND SERVICES

1. The Landlord shall maintain the dwelling unit, equipment and appliances, and common areas and facilities, to provide decent, safe, and sanitary housing in accordance with the Housing Quality Standards (24 CFR Section 882.109 and 887.251) for the Section 8 Existing Housing Program, including the provision of all the services, maintenance and utilities set forth in the Lease.
2. The Landlord shall respond with reasonable promptness to calls for service consistent with this section, and normally begin repairs within 5 days, depending on the nature of the repair.

## I. USE OF PROPERTY

1. The Tenant shall use the premises in such a manner as to comply with all local, state and federal laws. The Tenant shall not use the premises or permit it to be used for any disorderly or unlawful purpose in any manner offensive to other occupants of the building.
2. The Tenant shall not remodel or make any structural changes to the premises, nor shall the Tenant attach or remove any fixtures or locks, without the Landlord's prior written permission.
3. The Landlord shall supply the Tenant's apartment with electric light bulbs, fuses and fluorescent starters at the time the Tenant moves in. The Tenant is to furnish replacements thereafter and leave said replacements when the Tenant moves out.
4. Pets are permitted only with written consent of the Landlord.
5. No trash, trash cans or garbage receptacles shall be placed in patios, stoops, or public halls at any time. No signs, laundry or personal property shall be hung or placed in the public hall or on the exterior of any building or yard area.
6. The Tenant shall not commit any act which will unreasonably interfere with the rights, comforts, or

- conveniences of other tenants or occupants. The Tenant shall keep the volume of any radio, television or musical instruments sufficiently reduced at all times, so as not to disturb other occupants in the building.
7. The Landlord reserves the right to enter the unit for maintenance, to determine the condition of the unit, and to show the unit to building inspectors, appraisers, prospective buyers, etc., on reasonable notice and at reasonable times. The unit may also be shown to prospective renters after the tenant has given the Landlord notice to move.
  8. If the tenant moves out and fails to remove any of his/her personal property within 5 days, then the personal property shall be deemed abandoned.
  9. Failure of the Post Office to deliver a certified letter to the Tenant shall be considered bonafide evidence that the Tenant has vacated the unit.

#### J. INVENTORY

The following equipment is now on the premises. The Lessee agrees to maintain it in its present condition, reasonable wear and tear expected:

ITEMS	BRAND	NUMBER	COLOR	CONDITION
Refrigerator	TENANT TO SUPPLY - OWNER FURNISHING TEMPORARILY			G F P
Stove	TENANT TO SUPPLY			E G F P
Carpet/Floor	CARPET IN FRONT HALL & KITCHEN			NEW G F P
Drapes/Shades				E G F P
Cabinets	KITCHEN			E G F P
Storm Windows	IN BASEMENT (STORED)			E G F P
Screens	SCREEN DOOR FRONT & REAR			E G F P
Other Items				E G F P

ADDITIONAL COMMENTS:

#### K. TERMINATION OF TENANCY BY LANDLORD

1. The Landlord shall not terminate the tenancy except for:
  - i. Serious or repeated violation of the terms and conditions of the Lease;
  - ii. Violation of Federal, State, or local law which imposes obligations on a tenant in connection with the occupancy or use of the dwelling unit and surrounding premises;
  - iii. Other good cause. However, during the first year of the term of the Lease, the owner may not terminate the tenancy for "other good cause" unless the termination is based on malfeasance or nonfeasance of the Tenant Family.

The following are some examples of "other good cause" for termination of tenancy by the Landlord. (i) failure by the Tenant Family to accept the offer of a new Lease in accordance with paragraph L of this section; (ii) Tenant Family history of disturbance of neighbors or destruction of property; or of living or housekeeping habits resulting in damage to the unit or property; (iii) criminal activity by Tenant Family members involving crimes of physical violence to persons or property or use, or distribution of controlled

- substances; (iv) the Landlord's desire to utilize the unit for personal or family use or for a purpose other than use as a residential rent unit; (v) a business or economic reason for termination of tenancy (such as sale of the property, renovation of the unit, desire to rent the unit at a higher rental). This list of examples is intended as a non-exclusive statement of some situations included in "other good cause", but shall in no way be construed as a limitation on the application of "other good cause" to situations not included in the list. The Owner may not terminate the tenancy during the first year of the term of the Lease, pursuant to paragraph K (1) (iii), for the grounds stated in paragraph K (2) (i), K (2) (iv) or K (2) (v) of this section.
3. The Landlord may evict the Tenant from the unit only by instituting a court action. The Landlord must notify the PHA in writing of the commencement of procedures for termination of tenancy, at the same time that the Landlord gives notice to the Tenant under State or local law. The notice to the PHA may be given by furnishing the PHA a copy of the notice to the Tenant.

L. RENEWAL OF LEASE/OFFER OF NEW LEASE

Prior to the anniversary date of this Lease, the Landlord shall be mailed either a Request for New Contract Rent or a Request for Lease Approval. If a Request for New Contract Rent is sent to the Landlord, the Landlord shall request a new rent for the following year. The requested rent must be approved by the Section 8 Office. If a Request for Lease Approval is sent to the Landlord, the Landlord and Tenant shall utilize this form to request changes in the Lease for the following year. After approval of a proposed new Lease by the PHA in accordance with HUD regulations, the Landlord may offer the Tenant Family the proposed new Lease for execution on behalf of the Tenant Family, for a term beginning at any time after the first year of the term of this Lease. The Landlord shall give the Tenant written notice of the offer, with copy to the PHA, at least sixty days before the proposed commencement date of the new Lease term. The offer may specify a reasonable time limit for acceptance by the Tenant Family.

M. TERMINATION OF LEASE BY TENANT

The Tenant may terminate the Lease without cause at any time after the first year of the term of the Lease, on not more than sixty days nor less than 30 days written notice by the Tenant to the Landlord (with copy to the PHA). (The provisions of this subsection (M) are not intended to limit any right of the Tenant to terminate the Lease where so provided elsewhere in the Lease).

N. DISCRIMINATION

The Landlord shall not discriminate against the Tenant Family in the provision of services, or in any other manner, on the grounds of age, race, color, creed, religion, sex, handicap, national origin, or familial status.

O. COMBINING NOTICES

Any notice under paragraph (K), (L), or (M) of this section may be combined with and run concurrently with any notice required under State or local law.

P. ASSISTANCE CONTRACT

This Lease has been signed by the parties on the condition that the PHA will promptly execute a Housing Assistance Payments Contract or a Housing Voucher Contract with the Landlord. This Lease shall not become effective unless the

PHA has executed a Housing Assistance Payments Contract or Housing Voucher Contract with the Landlord effective the first day of the term of the Lease.

Q. PROHIBITED LEASE PROVISIONS

Notwithstanding anything to the contrary contained in the Lease, any provision of the Lease which falls within the classifications below shall be inapplicable.

1. Confession of Judgement. Consent by the Tenant to be sued, to admit guilt, or to a judgement in favor of the Landlord in a lawsuit brought in connection with the Lease.
2. Treatment of Property. Agreement by the Tenant that the Landlord may take or hold the Tenant Family's property, or may sell such property without notice to the Tenant and a court decision on the rights of the parties.
3. Excusing Landlord from Responsibility. Agreement by the Tenant not to hold the Landlord or Landlord's agent legally responsible for any action or failure to act, whether intentional or negligent.
4. Waiver of Legal Notice. Agreement by the Tenant that the Landlord may institute a lawsuit without notice to tenant.
5. Waiver of Court Proceeding for Eviction. Agreement by the Tenant that the Landlord may evict the Tenant Family (i) without instituting a civil court proceeding in which the Family has the opportunity to present a defense, or (ii) before a decision by the court on the rights of the parties.
6. Waiver of Jury Trial. Authorization to the Landlord to Waive the Tenant's right to a trial by jury.
7. Waiver of Right to Appeal Court Decision. Authorization to the Landlord to waive the Tenant's right to appeal a court decision or to waive the Tenant's right to sue to prevent a judgement from being put into effect.
8. Tenant Chargeable with Cost of Legal Actions Regardless of Outcome of Lawsuit. Agreement by the Tenant to pay lawyer's fees or other legal costs whenever the Landlord decides to sue, whether or not the Tenant wins.

SIGNATURES:

LANDLORD: KENNETH TAYLOR  
 BY: [Signature]  
 DATE: 8-27-93  
 ADDRESS: 6226 ORCHARD LE  
CINTI, D ZIP CODE 45213  
 TELEPHONE (HOME): 271-8878  
 BUSINESS: 271-8878

TENANT: CAROL O'NEAL  
 BY: [Signature]  
 DATE: 8-27-93  
 ADDRESS: 215 E. Rochelle  
 ZIP CODE 45219  
 TELEPHONE (HOME): 281-5144  
 BUSINESS: 421-0378





# County of Hamilton

## BOARD OF COMMISSIONERS

STEVEN J. CHABOT  
JOHN S. DOWLIN  
GUY C. GUCKENBERGER  
COUNTY ADMINISTRATOR  
DAVID J. KRINGS

## DEPARTMENT OF COMMUNITY DEVELOPMENT

ROOM 507 COUNTY ADMINISTRATION BUILDING  
138 EAST COURT STREET

CINCINNATI, OHIO 45202

October 19, 1993

JAMES R. LOWRY  
DIRECTOR

DAN DOMIS  
DEPUTY DIRECTOR

## PHONES:

COMMUNITY DEVELOPMENT  
(513) 632-8754

HOUSING  
(513) 632-8771

## NOTIFICATION OF CHANGE TO LEASE AND HOUSING ASSISTANCE PAYMENTS CONTRACT

EFFECTIVE DATE OF CHANGE: 11-1-93OWNER'S NAME: Ken TaylorTENANT'S NAME: Carol O'NealADDRESS: 6226 Orchard LaneADDRESS: 4938 Plainville Rd.CITY: Cincinnati STATE: OH ZIP: 45213CITY: Madisonville STATE: OH ZIP: 45227

This form serves as an amendment to the Lease and the Housing Assistance Payments Contracts. As a result of the information the tenant has provided to Section 8, the following is a summary of the changes:

## HOUSING ASSISTANCE PAYMENTS CONTRACT

1. Family portion of rent.....\$ 151.00 per month
2. Hamilton County (PHA) Assistance Payment.....\$ 391.00 per month

## LEASE

Amount of rent: The total rent shall be \$ 542.00 per month. The tenant shall pay \$ 151.00 per month and the Hamilton County Section 8 Program shall pay \$ 391.00 per month.

Other Changes to the Lease: Please add tenant's step sons (Jermaine Hudson and Cortez Hudson) to lease, they are now residing in the unit.

If the Tenant's share of rent has increased, the Tenant is eligible for an informal hearing if the Tenant believes a mistake has been made. To arrange an informal hearing, the Tenant must call Susan Walsh at 632-8772 no later than November 2, 1993

Sincerely,

*Lana Mortesi*  
Housing Specialist II

cc: tenant

Ex.